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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,697	02/07/2002	Jeffrey M. Wendlandt	1001.1440101	2520

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EXAMINER

PANTUCK, BRADFORD C

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/072,697

Applicant(s)

WENDLANDT, JEFFREY M.

Examiner

Bradford C Pantuck

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06/21/2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6 and 8-21 is/are allowed.
- 6) ☒ Claim(s) 22-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 22, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,016,369 to Parry. Parry discloses a clip and a method of using it, as shown in Figure 2, with two pieces. The first piece (2) has a first base (4) and a first projection (5) extending from the first base [see Fig. 1]. The second piece (3) has a second base (9) and a second projection (10) extending from the base [see Fig. 1]. The second projection includes multiple surfaces (interior), which define a reservoir (12). The two pieces are detachably connectable when the first projection (5) passes into the reservoir (12) [see Fig. 1; Column 2, lines 50-68]. The top surface of Parry's multiple surfaces is a puncturable material (14). The first projection (5) is adapted to pierce through the top surface (14) [Column 3, lines 21-24; Fig. 2]. The reservoir of Parry's clip contains a therapeutic agent—i.e. a sterilizing substance or other drug [Column 3, lines 1-3]. Parry discloses a second projection 10', in which an aperture is formed when the first projection (5') pierces it [Column 3, lines 21-24]. A therapeutic agent flows out of this aperture after the two pieces are connected [Column 2, lines 12-15].

Parry does not disclose the specific substances claimed by Applicant. However, Parry discloses filling the reservoir with a "sterilizing substance"—a material that would kill microorganisms [Column 1, lines 45-50]. Further, Parry explains that this pharmaceutical agent should "at least act to disinfect the wound and maintain aseptic conditions while the wound heals" [Column 4, lines 23-28]. Parry further explains that this liquid should have "anti-parasitic, anti-viral, anti-bacterial, immunological, or hormonal properties." [Column 1, lines 65-67]. Iodine and hypertonic saline (water with a very high salt content) are both well-known substances that have antimicrobial/antibacterial/disinfecting/germ-killing properties (see included references). A chemist would also understand that sodium morrhuate, ethanolamine oleate (one kind of alcohol), sotradecol, polidocanol, scleremo, sclerodex are capable of being used as anti-bacterial agents. Therefore, it would have been obvious to one having ordinary skill in the art of pharmacy/chemistry *to select* one the materials claimed by Applicant in order to disinfect the wound in an animal's ear caused by piercing it with Parry's clip.

#### *Allowable Subject Matter*

2. Claims 1-6 and 8-21 are allowed.

#### *Conclusion*

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,059,766 to Greff

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

***Response to Arguments***

5. As explained in the last office action, Parry discloses the use of therapeutic agents that have "anti-parasitic, anti-viral, anti-bacterial, immunological, or hormonal properties." [Column 1, lines 65-67]. He also says that substances that will cause aseptic conditions inside his clip are included in the scope of his invention [Column 4, lines 23-28]. At least iodine and salt water act as antibacterial liquids, as exhibited by the included references. It is unclear whether or not all or some of the other drugs in claims 22-24 inherently have such properties, but it is probable that they have some of the properties outlined by Parry. Further, Examiner maintains that most any liquid

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heated to a high temperature will act as a sterilizing agent [see Greff; column 3, lines 43-46]. Applicant is invited to *prove* that his substances have none of the properties of the pharmaceutical substances envisioned by Parry. However, *Applicant must provide evidence, in the form of an affidavit or a declaration by a pharmaceutical/chemical expert that such substances do not have use as "anti-parasitic, anti-viral, anti-bacterial, immunological, or hormonal properties"* [Parry: Column 1, lines 65-67].

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradford C Pantuck whose telephone number is (703) 305-8621. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BCP  
BCP

September 20, 2004

  
ANH TUAN T. NGUYEN  
PRIMARY EXAMINER  
